

An act to amend Sections 41030, 41032, 42010, and 42023, of, and to add Sections 42010.7, 42023.5, 42101.7, and 42104 to, the Revenue and Taxation Code, relating to telecommunications.

SECURED
COPY

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 41030 of the Revenue and Taxation Code, as amended by Chapter 926 of the Statutes of 2014, is amended to read:

41030. (a) The Office of Emergency Services shall determine annually, on or before October 1, to be effective on January 1 of the following year, a surcharge rate pursuant to subdivision (b) that it estimates will produce sufficient revenue to fund the current fiscal year's 911 costs.

(b) (1) The surcharge rate shall be determined by dividing the costs (including incremental costs) the Office of Emergency Services estimates for the current fiscal year of 911 costs approved pursuant to Article 6 (commencing with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone communications services and VoIP service to which the surcharge will apply for the period of January 1, 2015, to December 31, inclusive, of the next succeeding calendar year, but in no event shall the surcharge rate in any year be greater than three-quarters of 1 percent nor less than one-half of 1 percent.

(2) Commencing with the calculation made October 1, 2015, to be effective January 1, 2016, the surcharge shall be determined by dividing the costs (including incremental costs) the Office of Emergency Services estimates for the current fiscal year of 911 costs approved pursuant to Article 6 (commencing with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by

its estimate of the charges for intrastate telephone communications services, the intrastate portion of prepaid mobile telephony services, and VoIP service to which the surcharge will apply for the period of January 1 to December 31, inclusive, of the next succeeding calendar year, but in no event shall the surcharge rate in any year be greater than three-quarters of 1 percent or less than one-half of 1 percent. In making its computation of the charges that are applicable to the intrastate portion of prepaid mobile telephony services, the Office of Emergency Services shall use the computation method developed by the Public Utilities Commission and reported to the Office of Emergency Services pursuant to subdivisions (a) and (b) of Section 319 of the Public Utilities Code.

(c) When determining the surcharge rates pursuant to this section, the office shall include the costs it expects to incur to plan, test, implement, and operate Next Generation 911 technology and services, including text to 911 service, consistent with the plan and timeline required by Section 53121 of the Government Code.

(d) The office shall notify the board of the surcharge rate imposed under this part, determined pursuant to this section on or before October 1 of each year, and the surcharge rate applicable to prepaid mobile telephony services by determined pursuant to this section for purposes of the prepaid MTS surcharge calculated under Part 21 (commencing with Section 42001) on or before October 15 of each year.

(e) At least 30 days prior to determining the surcharge pursuant to subdivision (a), the Office of Emergency Services shall prepare a summary of the calculation of the proposed surcharge and make it available to the public, the Legislature, the 911

Advisory Board, and on its Internet Web site. The summary shall contain all of the following:

- (1) The prior year revenues to fund 911 costs, including, but not limited to, revenues from prepaid service.
- (2) Projected expenses and revenues from all sources, including, but not limited to, prepaid service to fund 911 costs.
- (3) The rationale for adjustment to the surcharge determined pursuant to subdivision (b), including, but not limited to, all impacts from the surcharge collected pursuant to Part 21 (commencing with Section 42001).

(f) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 2. Section 41032 of the Revenue and Taxation Code is amended to read:

41032. Immediately upon notification by the Office of Emergency Services and fixing the surcharge rate, the board shall each year no later than November 15 publish in its minutes the new rate, and it shall notify ~~by mail~~ every service supplier registered with it of the new ~~rate~~. rate by a means, or means determined by the board, that may include, but is not limited to, mail, electronic mail, or Internet Web site postings.

SEC. 3. Section 42010 of the Revenue and Taxation Code is amended to read:

42010. (a) (1) On and after January 1, 2016, a prepaid MTS surcharge shall be imposed on each prepaid consumer and shall be collected by a seller from each prepaid consumer at the time of each retail transaction in this state. The prepaid MTS surcharge

shall be imposed as a percentage of the sales price of each retail transaction that occurs in this state.

(2) The prepaid MTS surcharge shall be in lieu of any charges imposed pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) and the Public Utilities Commission surcharges for prepaid mobile telephony services.

(b) The prepaid MTS surcharge shall be annually calculated by the board by no later than November 1 of each year commencing November 1, 2015, by adding the following:

(1) The surcharge rate reported pursuant to subdivision (d) of Section 41030.

(2) The Public Utilities Commission's reimbursement fee and telecommunications universal service surcharges, established by the Public Utilities Commission pursuant to subdivisions (a) and (b) of Section 319 of the Public Utilities Code.

(c) (1) The board shall post, for each local jurisdiction, the combined total of the rates of prepaid MTS surcharge and the rate or rates of local charges, as calculated pursuant to Sections 42102 and 42102.5, that each local jurisdiction has adopted, not later than December 1 of each year, on its Internet Web site. The posted combined rate shall be the rate that applies to all retail transactions during the calendar year beginning April 1 following the posting.

(2) Notwithstanding paragraph (1), if a local agency notifies the board pursuant to subdivision (d) of Section 42101.5 that the posted rate is inaccurate or it no longer imposes a local charge or local charges or that the rate of its local charge or local charges has decreased, the board shall promptly post a recalculated rate that is applicable

to the jurisdiction of that local agency. The change shall become operative on the first day of the calendar quarter commencing more than 60 days from the date the local agency notifies the board of the inaccuracy or that it no longer imposes a local charge or that the rate of its local charge has decreased. Nothing in this section modifies the notice obligations of Section 799 of the Public Utilities Code. However, beginning January 1, 2016, the notification and implementation requirements of paragraphs (5) and (6) of subdivision (a) of Section 799 of the Public Utilities Code shall not apply to prepaid mobile telephony services.

(3) The board shall also separately post on its Internet Web site the individual rates for each of the following:

(A) Each of the Public Utilities Commission surcharges that make up the Public Utilities Commission surcharge portion of the prepaid MTS surcharge, as reported pursuant to Section 319 of the Public Utilities Code.

(B) The ~~percentage~~ rate for the emergency telephone users surcharge reported pursuant to subdivision ~~(e)~~ (d) of Section 41030.

(C) Each of the individual local charges reported pursuant to Section 42101.5.

(4) A seller collecting the prepaid MTS surcharge and local charges pursuant to this part and Part 21.1 (commencing with Section 42100) may rely upon the accuracy of the information posted on the board's Internet Web site in collecting and remitting all amounts of the prepaid MTS surcharge and local charges.

(d) (1) Except for amounts retained pursuant to subdivision (e), and except as provided in subdivision (f) for a seller that is a direct seller, all amounts of the prepaid

MTS surcharge and local charges collected by sellers shall be remitted to the board pursuant to Chapter 3 (commencing with Section 42020).

(2) A seller that is authorized to provide lifeline service under the state lifeline program or federal lifeline program, that sells prepaid mobile telephony services directly to the prepaid customer, shall remit the prepaid MTS surcharge to the board, less any applicable exemption from the surcharge that is applicable to the retail transaction pursuant to Section 42012.

(e) A seller that is not a direct seller shall be permitted to deduct and retain an amount equal to 2 percent of the amounts that are collected by the seller from prepaid consumers for the prepaid MTS surcharge and local charges, on a pro rata basis, according to that portion of the revenues collected by the seller for each of the following:

- (1) The emergency telephone users surcharge.
- (2) The Public Utilities Commission surcharges.
- (3) Local charges.

(f) A direct seller shall remit the prepaid MTS surcharge and local charges as follows:

(1) That portion of the prepaid MTS surcharge that consists of the Public Utilities Commission surcharges shall be remitted to the commission with those reports required by the commission. The amounts remitted to the Public Utilities Commission pursuant to this paragraph shall be deposited into the respective universal service funds created pursuant to Chapter 1.5 (commencing with Section 270) of Part 1 of Division 1 of the Public Utilities Code and to the Public Utilities Commission Utilities Reimbursement

Account described in Chapter 2.5 (commencing with Section 401) of Part 1 of Division 1 of the Public Utilities Code.

(2) That portion of the prepaid MTS surcharge that consists of the emergency telephone users surcharge shall be remitted to the board pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) for those retail transactions with a prepaid consumer in the ~~state~~. state, with a return filed with the board using electronic media. The amount remitted to the board pursuant to this paragraph shall be deposited into the State Emergency Telephone Number Account in the General Fund.

(3) Local charges, if applicable, shall be remitted to the local jurisdiction or local agency imposing the local charge. Remittance of the local charges shall be separately identified from any other local taxes or other charges that are remitted to the local jurisdiction or local entity imposing the local tax or other charge. The amounts remitted to the local jurisdiction or local agency imposing the local charge pursuant to this paragraph shall be deposited into the respective local jurisdiction or local agency account.

(g) A direct seller shall utilize the amounts posted by the board pursuant to subdivision (c) when determining what amounts to remit to the Public Utilities Commission, board, and each local jurisdiction or local agency.

(h) A prepaid MTS provider shall offer prepaid consumers the option to make payment for additional prepaid usage directly to the prepaid MTS provider at the provider's retail location or Internet Web site.

(i) The amount of the combined prepaid MTS surcharge and local charges shall be separately stated on an invoice, receipt, or other similar document that is provided to the prepaid consumer of mobile telephony services by the seller, or otherwise disclosed electronically to the prepaid consumer, at the time of the retail transaction.

(j) The prepaid MTS surcharge that is required to be collected by a seller and any amount unreturned to the prepaid consumer of mobile telephony services that is not owed as part of the surcharge, but was collected from the prepaid consumer under the representation by the seller that it was owed as part of the surcharge, constitute debts owed by the seller to this state. The local charge shall be collected by a seller, and any amount unreturned to the prepaid consumer of mobile telephony services that is not owed as part of the local charge but that was collected from the prepaid consumer under the representation by the seller that it was owed as part of the local charge constitutes a debt owed by the seller jointly to the state, for purposes of collection on behalf of, and payment to, the local jurisdiction and to the local jurisdiction imposing that local charge.

(k) A seller that has collected any amount of prepaid MTS surcharge and local charges in excess of the amount of the surcharge imposed by this part and actually due from a prepaid consumer may refund that amount to the prepaid consumer, even though the surcharge amount has already been paid over to the board and no corresponding credit or refund has yet been secured. Any seller making a refund of any charge to a prepaid consumer may repay therewith the amount of the surcharge paid.

(l) (1) Every prepaid consumer of mobile telephony services in this state is liable for the prepaid MTS surcharge and any local charges until they have been paid to this

state, except that payment to a seller registered under this part relieves the prepaid consumer from further liability for the surcharge and local charges. Any surcharge collected from a prepaid consumer that has not been remitted to the board shall be a debt owed to the state by the person required to collect and remit the surcharge. Any local charge collected from a prepaid consumer that has not been remitted to the board shall be a debt owed jointly to the state, for purposes of collection on behalf of, and payment to, the local jurisdiction and to the local jurisdiction imposing the local charge by the person required to collect and remit the local charge. Nothing in this part shall impose any obligation upon a seller to take any legal action to enforce the collection of the surcharge or local charge imposed by this section.

(2) A credit shall be allowed against, but shall not exceed, the prepaid MTS surcharge and local charges imposed on any prepaid consumer of mobile telephony services by this part to the extent that the prepaid consumer has paid emergency telephone users charges, state utility regulatory commission fees, state universal service charges, or local charges on the purchase to any other state, political subdivision thereof, or the District of Columbia. The credit shall be apportioned to the charges against which it is allowed in proportion to the amounts of those charges.

(m) (1) A seller is relieved from liability to collect the prepaid MTS surcharge imposed by this part that became due and payable, insofar as the base upon which the surcharge is imposed is represented by accounts that have been found to be worthless and charged off for income tax purposes by the seller or, if the seller is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. A seller that has previously paid the surcharge may, under rules and

regulations prescribed by the board, take as a deduction on its return the amount found worthless and charged off by the seller. If any such accounts are thereafter in whole or in part collected by the seller, the amount so collected shall be included in the first return filed after such collection and the surcharge shall be paid with the return.

(2) The board may by regulation promulgate such other rules with respect to uncollected or worthless accounts as it shall deem necessary to the fair and efficient administration of this part.

SEC. 4. Section 42010.7 is added to the Revenue and Taxation Code, to read:

42010.7. (a) Commencing January 1, 2017, a seller, other than a direct seller, with de minimis sales of prepaid mobile telephony services of less than fifteen thousand dollars (\$15,000) during the previous calendar year is not required to collect the prepaid MTS surcharge pursuant to Section 42010. The Department of Finance shall annually review and adjust that de minimis sales threshold as necessary to minimize program administration costs and maintain revenues to support program administration, enforcement, and Public Utilities Commission public purpose programs and rulemaking activities. Any adjustment of the de minimis sales threshold shall become operative on January 1 of the following calendar year. Nothing in this section prevents a seller from collecting and remitting the surcharge on a voluntary basis even if the seller meets the de minimis sales threshold.

(b) For purposes of this section, the de minimis sales threshold shall be based on the aggregate of all sales of prepaid mobile telephone services subject to the local charges at all retail locations operated by the seller and not the individual sales at each retail location operated by the seller.

SEC. 5. Section 42023 of the Revenue and Taxation Code is amended to read:

42023. (a) The Prepaid Mobile Telephony Services Surcharge Fund is hereby created in the State Treasury. The Prepaid MTS 911 Account and the Prepaid MTS PUC Account are hereby created in the fund. The Prepaid Mobile Telephony Services Surcharge Fund shall consist of all surcharges, interest, penalties, and other amounts collected and paid to the board pursuant to this part, less payments of refunds and reimbursements to the board for expenses incurred in the administration and collection of the prepaid MTS surcharge.

(b) All moneys in the Prepaid Mobile Telephony Services Surcharge Fund attributable to the prepaid MTS surcharge shall be deposited as follows:

(1) That portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge shall be deposited into the Prepaid MTS 911 Account. All moneys deposited into the Prepaid MTS 911 Account shall be transferred to the State Emergency Telephone Number Account in the General Fund. Fund and appropriated pursuant to Article 2 (commencing with Section 41135) of Chapter 7 of Part 20.

(2) That portion of the prepaid MTS surcharge that is for the Public Utilities Commission surcharges shall be deposited into the Prepaid MTS PUC Account. All moneys deposited in the Prepaid MTS PUC Account shall be allocated and transferred to the respective universal service ~~funds, funds~~ created pursuant to Chapter ~~1~~ 1.5 (commencing with Section 270) ~~of, of~~ Part 1 of Division 1 of the Public Utilities Code and to the Public Utilities Commission Utilities Reimbursement ~~Account, created pursuant to~~ Account described in Chapter 2.5 (commencing with Section 401) of, Part 1 of Division 1 of the Public Utilities Code. The Public Utilities Commission shall

allocate the moneys deposited into the Prepaid MTS PUC Account to the respective universal service funds and to the Public Utilities Commission Utilities Reimbursement Account and shall report to the Controller at the beginning of each calendar month for the months preceding, or other period as determined necessary by the Public Utilities Commission, on its allocation of those funds.

SEC. 6. Section 42023.5 is added to the Revenue and Taxation Code, to read:

42023.5. (a) To provide adequate cash flow for expenses incurred by the board in the administration and collection of the prepaid MTS surcharge, the Director of Finance may approve a short-term loan in the 2015–16 fiscal year from the General Fund to the Prepaid Mobile Telephony Services Surcharge Fund.

(b) For the purposes of this section, a short-term loan is a transfer that is made subject to the following conditions:

(1) Any amount loaned is to be repaid in full during the same fiscal year in which the loan was made, except that the repayment may be delayed until a date not more than six months after the date of enactment of the annual Budget Act for the subsequent fiscal year.

(2) Loans shall be repaid whenever the funds are needed to meet cash expenditure needs in the loaning fund or account.

SEC. 7. Section 42101.7 is added to the Revenue and Taxation Code, to read:

42101.7. (a) Commencing January 1, 2017, a seller, other than a direct seller, with de minimis sales of prepaid mobile telephony services of less than fifteen thousand dollars (\$15,000) during the previous calendar year is not required to collect local charges pursuant to Section 42101.5. The Department of Finance shall annually review

and adjust that de minimis sales threshold as necessary to minimize program administration costs and maintain revenues to support program administration, enforcement, and Public Utilities Commission public purpose programs and rulemaking activities. Any adjustment of the de minimis sales threshold shall become operative on January 1 of the following calendar year. Nothing in this section prevents a seller from collecting and remitting the surcharge on a voluntary basis even if the seller meets the de minimis sales threshold.

(b) For purposes of this section, the de minimis sales threshold shall be based on the aggregate of all sales of prepaid mobile telephone services subject to the local charges at all retail locations operated by the seller and not the individual sales at each retail location operated by the seller.

SEC. 8. Section 42104 is added to the Revenue and Taxation Code, to read:

42104. (a) To provide adequate cash flow for expenses incurred by the board in the administration and collection of the local charges, the Director of Finance may approve a short-term loan in the 2015–16 fiscal year from the General Fund to the Local Charges for Prepaid Mobile Telephony Services Fund.

(b) For the purposes of this section, a short-term loan is a transfer that is made subject to the following conditions:

(1) Any amount loaned is to be repaid in full during the same fiscal year in which the loan was made, except that the repayment may be delayed until a date not more than six months after the date of enactment of the annual Budget Act for the subsequent fiscal year.

(2) Loans shall be repaid whenever the funds are needed to meet cash expenditure needs in the loaning fund or account.

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LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Telecommunications: prepaid mobile telephony services: state surcharge and fees: local charges collection.

(1) The Emergency Telephone Users Surcharge Act generally imposes a surcharge on amounts paid by every person in the state for intrastate telephone service to provide revenues sufficient to fund "911" emergency telephone system costs, and requires the Office of Emergency Services to annually determine the surcharge rate. Commencing with the calculation made October 1, 2015, existing law requires the office to compute the charges applicable to the intrastate portion of prepaid mobile telephony services, as provided.

The Prepaid Mobile Telephony Service Surcharge Collection Act establishes a prepaid MTS surcharge, as defined, based upon a percentage of the sales price of each retail transaction that occurs in this state for prepaid mobile telephony services, as defined, that is imposed in lieu of any charges imposed pursuant to the Emergency Telephone Users Surcharge Act and specified Public Utility Commission surcharges. That act requires the prepaid MTS surcharge to be annually calculated by the State Board of Equalization by November 1 of each year, commencing November 1, 2015,

by using the emergency telephone user surcharge rate reported by the office and specified Public Utility Commission surcharges.

The Emergency Telephone Users Surcharge Act requires the office to notify the board of the emergency telephone user surcharge rate and the emergency telephone user surcharge rate applicable to prepaid mobile telephony services by October 15 of each year.

This bill would instead require the office to notify the board of the emergency telephone user surcharge rate by October 1.

(2) The Emergency Telephone Users Surcharge Act requires, immediately upon notification by the office and fixing the surcharge rate, the board to notify by mail every registered service supplier of the new rate.

This bill would instead require the board to notify every registered service supplier of the new rate by a means, or means determined by the State Board of Equalization, that may include, but is not limited to, mail, electronic mail, or Internet Web site postings.

(3) The Prepaid Mobile Telephony Service Surcharge Collection Act requires, on and after January 1, 2016, and before January 1, 2020, the prepaid MTS surcharge imposed by that act on a prepaid consumer to be collected by a seller from each prepaid consumer at the time of each retail transaction in this state.

This bill would, commencing January 1, 2017, exempt a seller, other than a direct seller, with de minimis sales of prepaid mobile telephony services of less than \$15,000 during the previous calendar year from collecting the prepaid MTS surcharge, and

would require the Department of Finance to annually review and adjust that de minimis sales threshold, as provided.

(4) The Prepaid Mobile Telephony Service Surcharge Collection Act creates the Prepaid Mobile Telephony Services Surcharge Fund in the State Treasury, and creates the Prepaid MTS 911 Account and the Prepaid MTS PUC Account in that fund. That act requires the portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge, which are remitted to the board, to be deposited into the Prepaid MTS 911 Account, and those deposited moneys to be transferred to the State Emergency Telephone Number Account in the General Fund. That act also requires that portion of the prepaid MTS surcharge that is for the Public Utilities Commission surcharges, which are remitted to the board, to be deposited into the Prepaid MTS PUC Account, and those deposited moneys to be allocated and transferred to the respective universal service funds.

This bill would specify that amounts transferred to the State Emergency Telephone Number Account are required to be appropriated pursuant to the Emergency Telephone Users Surcharge Act. This bill would require the Public Utilities Commission to allocate the moneys deposited into the Prepaid MTS PUC Account to the respective universal service funds and to the Public Utilities Commission Utilities Reimbursement Account and to report to the Controller on its allocation of those funds, as specified.

This bill would authorize the Director of Finance to approve a short-term loan in the 2015–16 fiscal year from the General Fund to the Prepaid Mobile Telephony Services Surcharge Fund to provide adequate cash flow for expenses incurred by the board in the administration and collection of the prepaid MTS surcharge.

(5) The Prepaid Mobile Telephony Service Surcharge Collection Act requires direct sellers to remit the prepaid portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge to the board in accordance with the Emergency Telephone Users Surcharge Act and to remit the portion of the prepaid MTS surcharge that is for the Public Utilities Commission surcharges to the Public Utilities Commission.

This bill would specify that those remitted amounts to the commission are required to be deposited into the respective universal services funds and the Public Utilities Commission Utilities Reimbursement Account, and that the remitted amounts to the board are required to be deposited into the State Emergency Telephone Number Account.

(6) The Local Prepaid Mobile Telephony Services Collection Act, on and after January 1, 2016, and before January 1, 2020, suspends the authority of a city, county, or city and county, including any charter city, county, or city and county, to impose a utility user tax on the consumption of prepaid communications service and any charge that applies to prepaid mobile telephony service, on access to communication services or access to local “911” emergency telephone systems, and instead requires those taxes and charges to be applied during that period under any ordinance to be at specified rates. The act requires these local charges imposed by a city, county, or a city and county, on prepaid mobile telephony services to be collected from the prepaid consumer by a seller at the same time and in the same manner as the prepaid MTS surcharge is collected under the Prepaid Mobile Telephony Service Surcharge Collection Act, as specified. Existing law requires all local charges collected to be deposited in the Local

Charges for Prepaid Mobile Telephony Services Fund, and transmitted to the city, county, or a city and county, as provided.

This bill would, commencing January 1, 2017, exempt a seller, other than a direct seller, with de minimis sales of prepaid mobile telephony services of less than \$15,000 during the previous calendar year from collecting the local charges, and would require the Department of Finance to annually review and adjust that de minimis sales threshold, as provided.

This bill would authorize the Director of Finance to approve a short-term loan in the 2015–16 fiscal year from the General Fund to the Local Charges for Prepaid Mobile Telephony Services Fund to provide adequate cash flow for expenses incurred by the board in the administration and collection of the local charges.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.